

AG Contract No.: KR03-1260TRN  
ADOT ECS File No.: JPA 03-058  
Project No.: 093 MO 139  
Project: BLM-US 93-Burro Creek Section  
Mitigation-Replacement Habitat  
TRACS No: H5494 01C  
Budget Source Item No.: 11003

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
BUREAU OF LAND MANAGEMENT  
KINGMAN FIELD OFFICE

THIS AGREEMENT is entered into 23 January, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, Kingman District, acting by and through its Contracting Officer (the "BLM").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The BLM is empowered by the Federal Land Policy Management Act of 1976 (Public Law 106-53) to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the State.

3. Incident to the reconstruction of US 93 to a four-lane divided highway, including a new bridge over Burro Creek, it is anticipated that the referenced reconstruction improvements will impact 1.68 acres of United States waters under the jurisdiction of the United States Army Corps of Engineers (USACE). The USACE, under Special condition #1 of the 404 permit (#2002-01011), requires mitigation of the impact area by replacement or restoration of lands for riparian habitat. To meet that requirement, the State and the BLM desire to participate in funding the acquisition of a minimum of 1.68 acres, or if no suitable lands are available (for acquisition), participate by funding to restore a riparian habitat on BLM lands. The State will pay the BLM a lump sum in lieu payment of \$16,800.00. Collectively herein referred to as the Project in which the BLM agreed to dedicate this in-lieu fee payment toward the purchase of lands or the restoration of a riparian habitat on BLM lands.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 26612  
Filed with the Secretary of State  
Date Filed: 01/23/2004

Janice K. Brewer  
Secretary of State

By: Dan D. Greenwald

## **II. SCOPE OF WORK**

### **1. The BLM will:**

a. Upon execution of this agreement invoice the State in an amount not to exceed \$16,800.00 for costs associated to complete the Project. Request for payment shall be submitted with the "ADOT Progress Payment" Report Form (attached). Electronic forms can be requested through Joint Project Administration, at the address provided under Section III. of Miscellaneous Provisions.

b. Deposit said \$16,800.00 in BLM account 7122 until completion of the Project. Any monies not expended for the Project shall be returned to the State upon termination of this agreement. The Project is intended to be completed by September 30, 2008. If the Project is not completed as noted herein, the parties may extend the agreement by Amendment.

c. Be the lead agency for the Project, conduct all necessary studies and investigations in which to determine to be the most appropriate action for the mitigation, which of the following alternatives may apply:

#### **ALTERNATIVE I**

i. Purchase a minimum of 1.68 acres of replacement wetland or riparian habitat lands evidence by deed, easement, or other instrument deemed acceptable by BLM.

ii. Bank all lands in excess of 1.68 acres purchased through State funding under the terms of this agreement as credit acreage for compensation of impact to riparian habitat on future State Projects

iii. Provide the State certified recorded copies of all pertinent escrow closing statements, title insurance policies and instruments of conveyance associated with purchasing said Wetlands.

iv. Acquire the parcel(s) in accordance with applicable federal laws and policies with the appraisal conducted according to the Uniform Appraisal Standards for Federal Land Acquisitions published by the Department of Justice 2000.

v. Upon completion of the land acquisition associated with this Project, the land shall be zoned for uses beneficial to wetland and riparian management.

#### **ALTERNATIVE II**

i. Should no suitable land be available at the allocated price, elect to complete restoration of a minimum of 1.68 acres of riparian habitat with the invoiced funds.

ii. The proposed restoration plan is to be approved by the Corps of Engineers prior to implementation.

iii. Said lands shall be zoned for uses beneficial to wetland and riparian management.

iv. Riparian area in excess of 1.68 acres rehabilitated with State Funding under the terms of this agreement shall be banked as credit acreage for compensation of impact to riparian habitat in future State projects.

d. Annually provide an accounting of Project expenditures to the State until completion of the Project.

### **2. The State will:**

a. Upon receipt of the "State Progress Payment" Report Form, remit to BLM a lump sum amount not, to exceed \$16,800.00 as the in-lieu payment for the mitigation effort.

b. Allow the BLM to purchase or restore lands in excess of the 1.68 acres referenced above with any remaining funds on deposit with BLM. Permit the BLM to bank said lands as credit acreage for compensation of impacts to riparian habitat for future State Projects within the Kingman Field Office administrative area.

c. Review the studies and provide comments as appropriate.

### **III. MISCELLANEOUS PROVISIONS**

1. This agreement shall remain in force and effect until completion of said project and final payments, provided; however, either party may cancel at any time prior to the commencement of performance under this agreement, upon thirty (30) days written notice to the other party.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511, as regards conflicts of interest on behalf of state employees.

4. The provisions of Arizona Revised Statutes Section 35-214 pertaining to audit are applicable to this contract.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties of this agreement shall comply with Executive Order Number 99-4 issued by the governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

6. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. No member of, or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17th Avenue – Mail Drop 616E  
Phoenix, AZ 85007

Bureau of Land Management  
Kingman Field Office  
2475 Beverly Avenue  
Kingman, AZ 86401

10. In accordance with Arizona Statutes Section 11-952, (D) attached hereto is the written determination of each party's legal counsel the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**US DEPARTMENT OF THE INTERIOR**  
Bureau of Land Management

By   
JOHN CHRISTENSEN, Manager  
Kingman Field Office

**STATE OF ARIZONA**  
Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator

**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**PROGRESS PAYMENT REPORT**

<b>Report No.</b>			<b>JPA</b>	
			<b>PROGRESS</b>	
<b>Item No.</b>			<b>FINAL</b>	
Project No.				
TRACS No.				
Name of Project				
<b>Name of Vendor</b>				
<b>REMIT PAYMENT TO:</b>				
Date Started	Estimated Completion Date:	On Going	% Billed	% Complete

### SUMMARY OF WORK FOR WHICH PAYMENT IS REQUESTED

[illegible]

Submitted By: _____	Date: _____	Total: To: Date:	\$0.00
Approved By: _____	Date: _____	Total: Previous: Report:	\$0.00
ADOT Project Manager		Current: Report:	\$0.00
Accepted By: _____	Date: _____		
Joint Project Administration			

APPROVAL OF THE BUREAU OF LAND MANAGEMENT, KINGMAN FIELD OFFICE, ARIZONA

ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the BUREAU OF LAND MANAGEMENT, KINGMAN FIELD OFFICE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the BUREAU OF LAND MANAGEMENT, KINGMAN FIELD OFFICE under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 15<sup>th</sup> day of December, 2003.

Gail Ahlson Acting Field  
Bureau Attorney Manager



TERRY GODDARD  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TRANSPORTATION SECTION  
WRITER'S DIRECT NO: 602.542.8837

**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-1260-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 15 January 2004

Terry Goddard  
ATTORNEY GENERAL

A handwritten signature in black ink, reading "James R. Redpath", is written over a horizontal line.

James R. Redpath  
Assistant Attorney General  
Transportation Section

JRR:djd:780214